



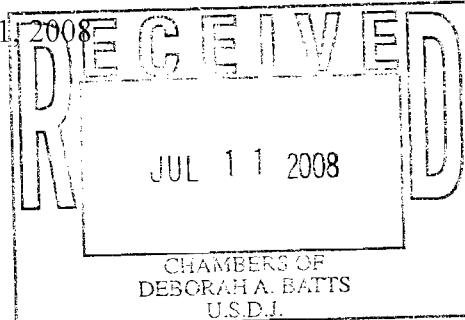
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U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

July 11, 2008

**BY HAND**

Hon. Deborah A. Batts  
United States District Court  
Southern District of New York  
500 Pearl Street, Rm. 2510  
New York, NY 10007

Re: Ortiz v. Chertoff, 08 Civ 03030 (DAB)

Dear Judge Batts:

I respectfully write to inform the Court about the status of this case and to request a 60-day extension of time for the Government to respond to Plaintiff Veronica Ortiz's Complaint. Ms. Ortiz's complaint was received in the Clerk's Pro Se Office on February 13, 2008, and forwarded to the United States Attorney's Office for the Southern District of New York on May 23, 2008. Accordingly, the Government's Answer would be due on July 21. This is the Government's first request for an extension. As explained more fully below, the Government anticipates filing a motion to dismiss and/or a motion for summary judgment in lieu of an Answer.

GRANTED  
IDAB

Ms. Ortiz, appearing pro se, filed this lawsuit alleging that the Citizenship and Immigration Services (CIS) had unreasonably delayed scheduling her for an interview in connection with her naturalization application that had been filed ten months earlier, on April 23, 2007. After filing her naturalization application, Ms. Ortiz departed from the United States for a brief trip to the Dominican Republic and sought readmission on August 13, 2007. However, because Ms. Ortiz had previously been convicted in the United States District Court for the Eastern District of New York of conspiracy to commit mail fraud, she was issued a Notice to Appear for removal proceedings before an immigration judge. More specifically, she was charged with being an arriving alien who is inadmissible to the United States under 8 U.S.C. § 1182(a)(2)(A)(i) (I) in that her conviction constitutes a felony crime involving moral turpitude. Ms. Ortiz's next hearing date before an immigration judge is scheduled for September 25, 2008. In the meantime, Ms. Ortiz had been scheduled to appear for an interview on her naturalization application on April 3, 2008, but she inexplicably failed to appear.

Because 8 U.S.C. § 1429 prohibits CIS from considering an application for naturalization by an applicant who is in removal proceedings, the Government anticipates a decision by CIS to this effect will be forthcoming, and will be relevant to this pending litigation. See e.g. Dahan v. U.S. Attorney General, 06 Civ. 3675 (CM), 2006 WL 2380388, at \*2 (S.D.N.Y. Jun. 24, 2006) (8 U.S.C. § 1429 bars the Government from considering naturalization application of any alien who

is the subject of removal proceeding, and pursuant to Fed. R. Civ. P. 12(b)(6), district Court should dismiss lawsuit for failure to state a claim upon which relief may be granted); Baez-Fernandez v. INS, 385 F. Supp. 2d 292, 294 (S.D.N.Y. Jan. 18, 2005) (naturalization application denied pursuant to 8 U.S.C. § 1429 because of pending removal proceeding; Court lacked jurisdiction to review CIS decision for failure to exhaust administrative remedies); Zayed v. U.S., 368 F.3d 902, 907 (6th Cir. 2004) (CIS “may not naturalize an alien” while removal proceedings are pending); De Lara Bellajaro v. Schiltgen, 378 F.3d 1042, 1047 (9th Cir. 2004) (where district court complaint was filed under 8 U.S.C. § 1421(c), district court may review CIS determination to deny naturalization application based on pending removal proceedings as provided by 8 U.S.C. § 1429); also see Legal Opinion, Martin, General Counsel (Dec. 3, 1996), available at 1996 WL 33166347 at 4 (upon the initiation of removal proceedings, an examiner should deny the naturalization application pursuant to 8 U.S.C. § 1429). In any event, as Ms. Ortiz did not appear for her scheduled naturalization interview, CIS has not unreasonably withheld action on her case.

We thank the Court for its consideration of this request.

Respectfully,

MICHAEL J. GARCIA  
United States Attorney



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**BY FEDERAL EXPRESS**

cc: Ms. Veronica Ortiz  
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**SO ORDERED**



DEBORAH A. BATTES  
UNITED STATES DISTRICT JUDGE